IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Bail Appl..No. 5696 of 2007()

CRIME NO.296/05 OF POOYAPPALLY POLICE STATION

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PETITIONER : SECOND ACCUSED

SANTHOSH,S/O.GEORGE,SANTHOSH BHAVAN,
THURAVOOR P.O,ODANAVATTOM,KOTTARAKKARA,
KOLLAM DISTRICT.

BY ADV. SRI.P.SIVARAJ

RESPONDENTS:

STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5696 of 2007

Dated this the 24th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The petitioner was allegedly found to be in possession of 3 litres of arrack. The petitioner took to his heels and could not be apprehended. Investigation is now complete. Final report has already been filed. Committal proceedings has been registered. The case has not been committed so far. The petitioner has not entered appearance. Consequently a warrant of arrest issued by the learned Magistrate is chasing the petitioner now.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that direction under Section 438 Cr.P.C and/or 482 Cr.P.C may be issued in his favour.

3. The application is opposed by the learned Public Prosecutor, who submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course.

4. Having considered all the relevant inputs, I find merit in the opposition b, y the learned Public Prosecutor. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior

notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-